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### Lawyers and the “new extraction” in Africa

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## Structured abstract

This paper examines the ongoing “new extraction” on the African continent. Contrary to mainstream scholarship and policies seeing in law an external variable to remedy the “resource curse”, this article channels attention towards the role of law as an *institution of extraction* in the *longue durée*. Unpacking the close association of law with the conversion of economic surpluses and power into enduring social relationships is used as an entry-point to trace the mechanisms by which the uneven and unequal connection between Africa and the world is being negotiated, justified and challenged over time.

To this end, this article deploys an approach anchored in political sociology of law and focused on the roles played specifically by lawyers to trace the “interconnectedness” between European colonialism on the continent and the consolidation of the contemporary international economic and legal political order. It illustrates this approach with the case-study of the “Africa” Bar in Paris as a key site in which extractive deals between multinational corporations and Francophone African states are negotiated.

This micro focus helps explain the dual position of the “Africa” Bar in Paris, as offshore yet connected as it is shaped by both imperial legacies and ongoing waves of globalization into the African continent.

This approach traces a more nuanced explanation of Africa’s unequal and uneven relationship with the global economy, as one shaped by the path of imperial legacies and successive and interconnected waves of globalization across Africa.

Key words: new extraction; Africa; Political sociology; global mineral value chains; lawyers

## Lawyers and the “new extraction” in Africa<sup>i</sup>

### Introduction. The “new extraction” in Africa: a challenge for policy and scholarship

Over the past fifteen years, the African continent has gained renewed prominence as a “mining frontier” (see Campbell 2009) in a context marked by the increased competition for critical raw materials and carbon energy and the ascent of China as an economic superpower. These changes have raised hopes for the economic takeoff of the continent. A 2010 McKinsey report estimated the potential benefits of consumer-facing industries, resources, agriculture, and infrastructure together across the continent at \$2.6 trillion in revenue annually by 2020 (Roxburgh *et al.* 2010).

However, the expansion of the “extractive frontier” in African contexts has come along with increased inequalities, violent societal conflicts and environmental risks, increased by the volatility of mineral prices on global markets. This renewed prominence of the African continent emerged in a context that contrasted markedly with the “new extraction” across Latin America a decade earlier (Bebbington 2009). The mining boom of the last two decades was most pronounced in Latin America, with a growth of the global share of Latin America in mining investment from 10 to 25% between 2003 and 2012 (Deonandan and Dougherty 2016), while to a large extent the rush is yet to come in Africa where mineral reserves remain for the most part untapped (Rosenblum 2016). In Latin American contexts the new extraction has also been accompanied by political and social movements fostering - with varying degrees of success - a radical agenda of post-extractivism. This included the assertion of indigenous rights of local communities over extractive resources, notably through the

increased exercise of the right to free, prior and informed consent institutionalized in various international legal instruments since the 1980s (see Raftopoulos 2017; Szablowski, 2007).

By contrast, the boom in extractive investments on the African continent in the first decade of the 2000s came at the tail-end of structural adjustment programs, spearheaded by International Financial Institutions (IFIs). These reforms engineered the privatization of extractive economies to foster the regulatory strength of private actors and markets against political elites and weak governance. Yet, international campaigns spearheaded by international non-governmental organizations (INGOs) such as Global Witness at the end of the 1990s on so-called “blood diamonds” underscored the Far-west like rush for extractive minerals in African contexts, foremost in the conflict-rife Democratic Republic of Congo. Campaigns for contract and revenue transparency, environmental protection, and corruption investigations in the 2000s yielded some success in spurring a global regulatory tide over extractive resources markets, including through the growing reach of the 1977 US Foreign corrupt practices Act (FCPA) (see Rich and Moberg 2015).

However, they could do little to curb the violence unleashed by this rush precisely because it unravelled in regions where global capitalism “finds minimally regulated zones in which to vest its operations” (Comaroff and Comaroff 2012: 13). Indeed, these advocacy campaigns and policy initiatives happened “in a game of catch-up where the damage of the initial gaps have never fully been assessed” (Rosenblum 2016). Ongoing battles on the detrimental societal and environmental effects of extractive deals between multinationals and resource-rich states continue to stress the acuteness of contests over the distribution of natural resources and benefits derived from them. They also pinpoint “loopholes” in the reach of global regulations (see Cutler and Dietz 2017) and the difficulty (if not total lack) of remedies available to disenfranchised communities at the national and international levels (see Muir Watt *et al.* 2019).

Part of the difficulty relates to the framing of the regulatory response to the issue of the governance of extractives on the African continent. The “resource curse” idea (see for an excellent critical overview, Murrey *forthcoming*) has gained traction in research and policy-making since the end of the 1980s as the dominant lens to understand the poor development performance of natural resource-rich African countries, due to wealth capture by corrupt political elites and conflict. The “resource curse” explanation has exerted a strong policy pull from the 1990s. The overwhelming tendency of IFIs is to point to domestic political factors as the key explanation for the disappointing returns of mining riches, i.e. corruption, lack of transparency and weak governance in African contexts (see Collier 2007).

In the past couple of decades, the “resource curse” has generated intense debates, focused foremost on the methodology used to assert a causality between extractive governance and poor socio-economic performance (see the critique by Bebbington *et al.* 2018: 3-4). Debates on the resource curse have since evolved to focus on institutional quality as a primary determinant of diverging development outcomes. Scholarship in economics is increasingly underlining that rather than simply resources themselves, it is the institutions of extraction that play a crucial role in shaping the societal and environmental impacts of extractive commodities (Acemoglu and Robinson 2014). Thus, “‘getting the institutions right’ became the central objective in efforts at ‘escaping the resource curse’” (ibid: 3, quoting Humphreys *et al.* 2007).

Yet, building partly on the resource curse debate as well as on scholarship that preceded it, a growing body of work is emphasizing the need to understand the role of these institutional drivers in resource-dependent development not simply as top-down externally-driven variables to remedy the “resource curse”. Rather, it is their role in the *longue durée* that needs to be assessed: “one cannot build a framework to analyse the relationships between politics, extractive industry, and development and then introduce ‘institutions’ as an



independent mediating variable. Such institutions are themselves a product of the same relationships that they mediate and have to be accounted for historically” (Bebbington *et al.* 2018: 6).

Looking at the *longue durée* of institutions of extraction recognizes that just like Latin America’s, much of Africa’s “economic and social history could be read as a long engagement with extraction” (Bebbington 2009: 14). The central role played by the African continent in the emergence and expansion of contemporary capitalism has long been established in a rich body of scholarship in political economy (drawing in particular on Rodney 1972) and anthropological and ethnographic work (see e.g., Ferguson 2006; Ellis 2012).

This article builds on and contributes to this body of work by channeling attention towards the role, in the *longue durée*, of law as an institution of extraction. The global regulatory tide has spurred an increased demand for law, and with it for lawyers, to strengthen the governance of mineral markets, be it in the form of “corporate social responsibility” or the stability of extractive contracts. A great deal of the scholarship focused on international and domestic legal regimes governing extractives is concerned with the pluralism opened by the interplay between multiple, overlapping and often conflicting local, national, regional and international legal regimes (see Szablowski 2007) and the gaps for accountability fostered by the globalization and financialization of mineral value chains (Cutler and Dietz 2017). Certainly, the prominence taken by “corporate social responsibility” as a set of “soft” laws self-governing extractive industries has contributed to the growth of an interdisciplinary body of literature attuned to the power relations at play in the interactions between corporate activity and societies (Walker-Said and Kelly 2015).

However, that law, in the form of multiple, overlapping and often conflicting local, national, regional and transnational legal regimes, as well as soft and hard law, plays a constitutive role in the ordering of mineral global value chains is yet to have gained enough traction in scholarship (see IGLP Law and Global Production Working Group, 2016). Policies still overwhelmingly tend to focus on law as a top-down and external variable, seeing in “clear rules” of governance a solution to the poor development returns of resource-rich African countries (e.g. Smith and Rosenblum 2011).

This article therefore calls for a renewed research agenda amenable to trace the interaction between law and extraction in the political economy of African states and in their relationship with global markets for extractives in the *longue durée*. The central claim of this research agenda is that uncovering the social, economic and political variables channeled through law and shaped by law provides a formidable entry point to trace the mechanisms by which the uneven and unequal connection between Africa and the world (see Cooper 2014) is being negotiated, justified and challenged over time.

Section 2 describes the approach fostered here and the explanatory lens it is amenable to provide. It suggests the relevance of combining a political sociology of law and of lawyers through a micro focus centered on the roles played specifically by lawyers as builders of the state and intermediaries of globalization in Africa. Such an approach can help trace developments that remain otherwise invisible, notably the “interconnectedness” (Subrahmanyam 2004) between European colonialism on the continent, the emergence of global capitalism, and the consolidation of the contemporary international economic and legal political order since the colonial era. This micro focus, further, can help overcome the dis-connection between efforts to foster the redistribution of natural resources in resource-rich African states, and outcomes seen to continuously favor the prominent position of Northern multinationals and state elites in the African South. The approach of globalization suggested here underlines dynamics of flows and counter-flows (see Ibhawoh 2013) that go beyond dichotomies between the Global North and the Global South, international law, and

sovereignty. These dynamics indeed point to a more nuanced (though not less bleak) explanation of Africa's unequal and uneven relationship with the global economy, as one shaped by the path of imperial legacies and successive interconnected waves of globalization across Africa. Section 3 illustrates this research agenda with an emblematic empirical case-study: that of the "Africa Bar" in Paris, as a key site in which extractive deals between multinational corporations and Francophone states in West Africa are negotiated. It underlines the offshore yet connected structure of this small professional market, which, though tamed in recent years through regulatory pressures, still fosters inter-personal relations between French, white, corporate lawyers and African political elites.

### **Law(ers) in the uneven and unequal relationship between Africa and the world economy**

Debates on the role of law and legal institutions in the development of African states do not escape a protracted dependency lens. The failure of the legal systems inherited from colonization (see World Bank 2003) has been coupled with the need to reform - if not reinvent - legal institutions so as to check the tendency towards personal, tyrannical and anti-entrepreneurial governance (Acemoglu and Robinson 2001). A number of studies focused on the governance of extractives across Africa have certainly underscored the positive effects of some legal reforms, especially international legal initiatives aimed at transforming the behavior of multinational extractive companies, such as section 1502 of the U.S. Dodd-Frank Act of 2010, which requires publicly traded companies to ensure that the raw materials they use to make their products are not tied to the conflict in the Democratic Republic of Congo, or soft law initiative led by the corporate sector itself to foster the social responsibility of its members, such as the International Council on Mining and Metals (see Berman *et al.* 2017; Rich and Moberg 2015). Yet, some of these same studies are also highlighting paradoxes. Berman *et al.*'s economic study (2017) unsurprisingly correlates the surge of societal conflict at the local level with the presence of foreign extractive companies on the African continent, which account for 60% of the sector. However, they also emphasize the sustainability of social ties: according to these authors, the presence of multinational corporate firms with a colonial past does not increase violence at the local level. This somewhat surprising conclusion lies in political embeddedness, that is the capacity of these corporations to benefit from the (military) protection of the host state.

The ongoing Global history turn in historical scholarship, particularly legal history (see Benton and Ford 2016), has opened promising avenues to connect law to such political, economic and social variables, in the *longue durée*. This body of scholarship underscores the connections between successive and competing imperial models, emphasizing how imperial legacies have been embedded in the modern nation state and the contemporary international legal and political order (see Burbank and Cooper 2010). Law was the cutting edge of colonialism (Chanock 1985), but colonialism was also ripe with conflicts over law's remit. Thus, the imposition of a body of property law attuned to the economic interests of *métropoles* in their colonies was used to marshal the products of extraction - be it slaves, crops or minerals - to the metropolitan cores, and to ascertain a global political economy that would entrench colonies in the periphery. But the question of *who* benefited from property rights over land and extractive goods at the local level was the object of intense and continuous struggles - between European merchants, colonial administrators and local chiefs, among others (see Breckenridge 2011). In other words, law's remit depended heavily on social and political variables at the local level.

The embeddedness of the contemporary international legal and economic order in colonialism has long been established (see Anghie 2005). Yet, Benton and Ford (2016) also trace how international law emerged out of a haphazard process over several centuries. Ultimately contributing to the growing reach of the metropolitan core and fostering the position of the British as world hegemon from the mid-19<sup>th</sup> century, this process was heavily influenced and mediated by middle-men and social hierarchies at the local level and by political conflicts that circulated and boomeranged back and forth between the *métropoles*, the colonies and among empires. International law in the form of an international legal order reflected therefore a series of bilateral treaties and other legal regimes that created a series of permissive spaces for imperial enforcement relying on British municipal law - specifically in relation to property rights - and producing patchy regulatory regimes.

This body of scholarship emphasizes the relevance of looking at social ties not only as a defining feature of colonial rule, but also as a *structural* component of law. They thereby open paths to trace the close association of law with the conversion of economic surpluses and power into enduring social relationships, in the *longue durée*. These insights on the diffusion of what was gradually institutionalized as international law – what Benton and Ford (2016) refer to as “vernacular constitutionalism” – can also provide interesting paths, synchronically, to make sense of the re-structuration of markets for extractive commodities since the 1990s due to their increased globalization and financialization. The highly fragmented structure of the global market for minerals, which gives the upper hand to private corporations (mostly Northern) in the production, pricing, and investment decisions, while allowing for a multiplicity of intermediaries, from local chiefs through to red-neck extractive companies less vulnerable to reputational costs, plays into the relative breadth and scope of global regulatory frameworks, themselves shaped by intense economic and political struggles between the United States and emerging economic cores, foremost China. Again, law seems to be the cutting edge of these dynamics. Ongoing initiatives aimed at transforming the asymmetrical relationship between African states and private Northern multinational corporations stem from the need to stabilize foreign investments, away from the economic, political, and reputational costs of the renegotiation of extractive contracts, and their contests in arbitral and jurisdictional settings, including by “third parties” to extractive contracts like local communities. Again, also, distribution conflicts over extractives are played through law and are as much about law’s remit as they unfold across multiple scales (see Muir Watt *et al.* 2019).

A recent call for an inter-disciplinary dialogue between critical global political economy and legal scholarship to address the importance taken by multinationals in political and economic governance is offering some insights to address the challenges raised by this fragmentation. Looking in particular at the prominence taken by private contracts – and with them, by private actors - in global governance, Cutler and Dietz (2017) frontally address the question of “who gets what,” that is who benefits or loses out of a global economy growingly structured around private contracts as an institution of transnational governance, in that it continuously redefines the frontiers between politics, economics and societies at the domestic and global level. Part of this research agenda speaks specifically to the question of extractives, by underscoring the need to document relations of power along mineral chains, from the domestic level through to global markets (see Cutler 2017).

The research agenda opened by these combined insights is exceptionally challenging as it requires combining focal lengths, by zooming in onto specific contexts and by zooming out on global changes (see Cooper 2014) so as to trace the interconnectedness between legal, political, economic and social variables, and local, national, regional and global scales. It is also confronted to acute knowledge gaps, specifically on intermediaries, such as lawyers, involved in the negotiation of extractive deals. Seemingly on a par with the ebb and flow of

policy orientations and geostrategic interests over the continent, lawyers involved in the “new extraction” are overwhelmingly construed under two opposed guises. They are either denounced as mercenaries at the service of new forms of colonial “looting” (e.g. Burgis 2015) or idealized as a professional corps defending the rule of law (see Halliday et al. 2012).

Yet, focusing on lawyers - their trajectories, their characteristics and their professional strategies, can provide a formidable entry-point to trace these inter-connections. This political sociology of law and of lawyers reflects the research path opened by Ernst Kantorowicz (1989) and others in his wake, who have shown that lawyers are structurally positioned to play “double games” (Dezalay and Garth 2011). While at the service of power holders - and as such playing a central role of legitimation of state power - lawyers also need to distance themselves from politics, as a condition to protect the autonomy of the law, and with it their professional practices. Tracing these “double games” has opened rich avenues to trace and account for the interstitial position of legal elites - African, European, and others - in the trajectory of the state and as intermediaries of the successive phases of globalization on the African continent (see Dezalay 2015; 2018). Negotiating sovereignty as “shared out, layered [and] overlapping” (Burbank and Cooper 2010: 17) in imperial settings, lawyers could navigate between corporate and state power, the colony and the *métropoles* and inter-imperial confrontations. Imperial legal realms were particularly favorable to the positions of lawyers as both collaborators and opponents (Oguamanam and Pue 2016): thus, lawyers’ double games were embedded in, as much as they were shaping, battles over state power.

This approach is instrumental to trace how the legacy of the imperial realm is played out in the present, providing the path from which current developments emerge or diverge from (Dezalay and Garth 2010). But it also emphasizes how, in the present, hegemonic battles continue to be played in conflicts through and around law. This entry-point has indeed proven a formidable way to account for patterns of globalization in the contemporary era, in particular to trace US-led hegemonic exports of ideals and practices across Latin America and Asia (Dezalay and Garth 2002; 2010). De sa e Silva and Trubek (2018) underscore the interdependence, if not symbiosis, between the professional power of corporate lawyers and economic development strategies in the past thirty years in Brazil, and the importance of alignment with and resources drawn from international links, specifically with the corporate legal sector in the US. In a current context of acute global competition over critical minerals and carbon energy, and growing contests for hegemony by new economic superpowers like China, tracing the profiles, resources and strategies of lawyers involved in the negotiation of extractive contracts between multinationals and resource-rich African states can thus offer a way not only to see how imperial pasts are woven into the present, but also how new forms of imperialism may be emerging.

### **A case-study of the “Africa Bar” in Paris: *offshore*, yet connected<sup>ii</sup>**

The case study presented here to provide an empirical example is an apparently *counter-intuitive* illustration: the “Africa” Bar in *Paris*. Yet, tracing the individual trajectories and professional strategies of the lawyers operating within this social microcosm underscores how this site emerged as key marketplace in which extractive deals, along with other emerging economic sectors such as infrastructures and telecommunications, are negotiated between multinational corporations and African states. This entry-point also helps explain the offshore geographical position of this site due to an enduring double position of Paris: as a former colonial *métropole*, and also as a beach-head in the expansion of U.S.-led globalization of corporate law toward Europe from the 1980s, and more recently into Africa. The analysis of the social relations at play in this microcosm thus provides an emblematic entry-point to trace how the relationship between extractive economies, state transformations,



and the position of Africa in globalization are negotiated in the *longue durée*. It is also a crucial site to map out law's entanglement with social networks, politics, and economics, across time and space.

Focusing on lawyers operating within this "Africa" Bar in Paris, I have relied on a qualitative methodology that can be described as relational biography.<sup>iii</sup> Asking respondents *who* they are, that is exploring not only their professional and educational background but also their social characteristics, is a way to trace how successful their strategies could be in entering and positioning themselves within this small professional market. Beyond, it is a way to map out the configuration of this space across time and space.

Channelling attention towards the agents invested in this Bar and their characteristics is also the only way to depart from apparently irreconcilable oppositions - between the national, and the international, and foremost the ideological trope under which extractive deals are commonly construed. "It's a White's business!"<sup>iv</sup> interjected a senior economic consultant asked about dealings between resource-rich African states and multinationals from the North. The spectre of neo-colonialism in the on-going rush for natural resources in Africa is intensified by the economy of appearances which shrouds the industry. Talks of mining "booms" or of the "perfect storm" are mired with rumours. Not only are extractive contracts between resource-rich states and multinationals for the most part sealed under a lid of secrecy. But accurate data on actual extractive potentials, projects and economic returns are hard, if not impossible, to come by. Particularly in France, due to the sulphurous legacy of the "Françafrique,"<sup>v</sup> the reputation of lawyers involved in dealings in the African continent has been tainted with phantasms and denunciations. The "Club of Africans," hailed as the "white marabouts of the *Françafrique*" (Hugeux 2007), was described somewhat scathingly by a respondent as comprising the "incompetent," the "suitcase carriers," the "skilled-ones who know how to carry suitcases" and the "skilled ones who carry portfolios."<sup>vi</sup>

Yet, the originally extremely select "Africa club" of Paris has recently grown into an enlarged though still restricted market of about twenty lawyers, controlled by a dozen Paris offices of U.S. and U.K. multinational corporate law firms. Yet, this small market remains dominated predominantly by *French* male lawyers operating within these firms. The trajectory of a prominent member of this Bar can help explain what can thus be described as a symbolic revamping of legal deals between multinational corporations and resource-rich states on the African continent - but only, though, through a slight displacement in the structure of positions within this small professional market. After studying law in France, *Antoine* left for Vanuatu, as a "conscientious objector,"<sup>vii</sup> where he was appointed as public prosecutor at the country's independence in 1980. Antoine then studied international law in Australia, which he described as "a rare vocation" at the time. After working at the Crédit du Nord for two years in financing, he moved to Gabon, as an associate at Fidafrica, the legal branch of PricewaterCoopers (PwC), until 1998. In this capacity, he became the counsel of Samuel Dossou Aworet - Gabon's "Mr Oil."

The recent conversion of this "White African" as a vocal proponent of the "social responsibility of corporations," notably as a member of the Corporate Social Responsibility Committee of the American Bar Association, can be explained by external shocks - politically and economically driven - that have contributed to restructuring the social structure of this small niche of counsels for corporations and African heads of state. The growth of this legal market can be attributed in part to the increased financialization of commodities markets in the past fifteen years, and with it to the growing technicality of dealings on the continent (see UNCTAD 2012). Multinational corporate law firms were better positioned to benefit from these changes due to their collective *know how*, from the negotiation of contracts, to arbitration. The 2008 financial crisis and, before that, the Enron scandal in 2002 which precipitated the demise of Andersen and shed light on the conflicts of

interest of consulting firms, like PwC, also opened new opportunities for multinational corporate law firms towards these new emerging economic markets (see The Economist 2015).

Other global drivers help explain the dynamics of this enlargement. On the one hand, incentives for the global regulation of dealings between foreign corporations and resource-rich states in Africa increasingly impact on the operations of multinational corporations on the continent. For the most part a set of soft law - known as “corporate social responsibility,” non-binding on corporations - these regulations carry heavy reputational costs. The growing reach of the 1977 US FCPA against corruption, and the Extractive Industries Transparency Initiative (Rich and Moberg 2015) also played an instrumental role. Extractive deals in the African continent are also heavily impacted by development policies and the role of invisible actors sitting at the negotiation table between multinationals and resource-rich African states: the World Bank and bilateral development agencies. Most lawyers in the “Africa club” thus got their introduction to the developing continent by working on sovereign debt restructuring in the 1980s. The waves of privatization of extractive industries - spearheaded by the World Bank through the 1980s - opened up opportunities for corporate lawyers, and so did the promotion of “public-private partnerships” from the early 1990s, as they position the contract and the lawyer at the heart of the relation between the public sector and the private sector (see Vauchez 2012: 79).

Driven foremost by the need to stabilize foreign investments - against challenges to extractive contracts, like national fiscal policies of “upwards adjustments” (so-called “resource nationalism”), and jurisdictional contests - a number of North-driven policy endeavours have aimed at “levelling the playing field” between foreign corporations and African states since the 2010s. For example, the “Connex Initiative”<sup>viii</sup> spearheaded by the German government during its presidency of the G7 in 2014 aimed at drafting a “code of conduct” to “strengthen advisory support to low-income country governments in their negotiation of complex commercial contracts - to make the support that is available more comprehensive and more responsive to governments’ needs and to contribute to fairer, more sustainable investment deals.”<sup>ix</sup> The African Legal Support Facility set up in 2010 in Abidjan under the umbrella of the African Development Bank - and the sponsorship of the NGO Transparency International - similarly endeavours to provide assistance to African countries to strengthen their legal expertise and negotiating capacity in debt management and litigation, natural resources and extractive industries management and contracting, investment agreements, and related commercial and business transactions. For both initiatives, a core aim is therefore to restructure legal services to African states away from a charismatic market of shadow advisors, towards an enlarged and more transparent market of legal services to states.

Yet, to understand the ambiguous impact of these changes on the “Africa club” in Paris it is necessary to relate them to two other connected dynamics: the structuration of the corporate Bar in Paris over time; and the threads of relations between France and its former colonies. Both define barriers of entry and the distribution of positions in a space whose structure has been transformed under the impetus of the “Wall street” law firm model since the 1990s (see Dezalay 1992), but whose boundaries remain defined by the capacities to access and juggle across poles of power (economics, politics, social) shaped by the relations between Paris and its former colonies.

This is particularly visible in the trajectory of one of the few Africans within this select market, Pascal Agboyibor. In his late forties, this Togolese lawyer is one of the very few Africans working at multinational corporate law firms, what more, as a sitting member of the administrative council of the U.S. firm Orrick Herrington & Sutcliffe LLP and the head of its Africa department in Paris. Agboyibor is hailed as a “shadow power broker” (Ngisi 2015) of transactions between states and foreign corporations in the African continent. With a 60

people strong department, Orrick, he claims, invests a huge proportion of its activities - 20% - in Africa. "I was taught very early on that I would become a lawyer."<sup>x</sup> The law, for Agboyibor is an acute political and family matter. His father, Yawovi Agboyibo, a former president of the Lomé Bar, political opponent and Prime minister in the transition between the Gnassingbé regimes (in 2006-2007) played a prominent role in the transition of Togo to multi-partyism in 1991. Yawovi Agboyibo had also turned to corporate law in the early 1970s by integrating the very first law firm of the country,<sup>xi</sup> after studying law in France. During an era when the newly independent state of Togo was massively recruiting into the administration, this choice appeared like an anomaly. Yet, investing in corporate law had insured the conversion of the resources of this royal family, evinced from local power since the 1930s<sup>xii</sup> by the French colonial administration, towards the political and economic networks tying the country to its former *métropole*.

One generation later, this proximity contributed to propel Pascal Agboyibor into the close-knit corporate Bar in Paris, first in 1993 at Jeantet et Associés, one of the French pioneers of corporate law, before joining the Paris branch of the U.K. firm Watson, Farley and Williams in 2000, whose teams integrated with Orrick, Herrington & Sutcliffe LLP in 2002. Agboyibor became a partner at Orrick in 2003. After studying law in Lille, Agboyibor built up his portfolio of African relations during a secondment at the African Development Bank in Abidjan in 1996 and on introductions from his father - notably to take on the latter's arbitration disputes between the Democratic Republic of Congo and "vulture funds."<sup>xiii</sup>

Agboyibor's trajectory thus unveils a "layered" habitus pointing to the multiple historical strata of legal globalization on the African continent as much as their connexions with local struggles and political hierarchies. But it also points to the wider transformation of corporate legal markets since the 1990s and the prominent yet ambiguous position of Paris in these developments. When he started his career, Agboyibor strategically invested in securitization, positioning himself in the financialisation of commodities markets. He reinvested fully his African portfolio in the wake of the 2008 financial crisis, which prompted the search of multinational corporate law firms for new markets in emerging economies, including Africa.

While only 10% of Agboyibor's practice involved business transactions on the African continent in 2008, it now accounts for 99% of his time. Though, when he entered Jeantet in the early 1990s, there were but a handful of Africans in corporate law firms in Paris - and elsewhere. His first "African" case involved the Chad-Cameroun pipeline. "It was the old argument at the time. They needed an African to sit at the table. There is a deep symbolic violence behind this. This is probably what made me leave Jeantet. There is a huge difference between French and Anglo-Saxon firms on this."

Part of the success of U.S. and U.K. corporate law firms in dominating the corporate legal market for extractives in Paris also stems out of the huge capacity of multinational law firms - as opposed to solo legal practice - in dodging the volatility of markets for commodities (and with them, that of legal markets), including by waging multi-front legal strategies: from the negotiation of contracts to arbitration or litigation. As underscored by a respondent: "the difference between Agboyibor and others is the structure of the firm: it is better than having lone lawyers doing all the work."<sup>xiv</sup> Yet, it is also no accident that predominantly French lawyers operate within this market. It enables these firms to build on a symbolic displacement, away from the stigmata of the "Françafrique", while still also benefiting from the *know who* of these lawyers.

It is perhaps on the side of services to states that the transformation of the "Africa" Bar in Paris is the deepest - though the shift remains symbolic. As explained by a respondent, in the past "there was not much regulation. We still work a lot for states, but it is mostly private practice. The practice of counselling for states has evolved. It is more transparent,

more open. Now it works a lot on the basis of tenders. Before, it was through inter-personal relations; presidents and political advisors would meet their counsels by chance encounters, in restaurants. Now except for counsels to presidents, where it is different, it is all on the basis of tenders.”<sup>xv</sup> Initiatives such as “Connex” or the African Legal Facility mentioned above aim precisely at opening up this still extremely close-knit market defined by charismatic characteristics and inter-personal ties.

The stake of these transformations is indeed access to Africa as a new market for corporations and law multinationals from the U.S. and the U.K.: as stated by a professional publication, “an Africa office is no magic door to deals” (Taylor 2016) especially if newcomers are not corporations with an imperial past (The Economist 2016). The offshore – yet connected – structure of the Africa Bar in Paris could thus be long term - depending on the pace of development and varied structure of national legal fields on the African continent.

## Conclusion

In media and specialist accounts, talks of the end of the commodities’ “super cycle” - and with it, the fear of African states plunging into the debt crisis of the 1980s have re-ignited the “resource curse” debate. Policies continue to correlate the poor development performance of resource-rich African states to their poor governance and the weakness of their institutions. Yet, channeling attention towards law not as an external variable to curb the “resource curse”, but rather itself an institution of extraction in the *longue durée* can provide for a more nuanced picture of the role played by law, over time, to negotiate, justify and challenge the uneven and unequal relationship between Africa and the world economy over time.

The position of the “Africa” Bar in Paris underscored the relevance of looking at the past to understand the transformation of this relationship over time. Channeling attention towards the characteristics of the agents invested in the “Africa” Bar, their biographies and their professional strategies, underscored the specificities of this professional market as a “cross-roads” space. Structured around combinations of resources - economic, social, political, and legal -, this space is by definition trans-national, shaped by imperial legacies and the 1980s’ wave of corporate legal globalization into continental Europe. It is also a symbolic space where the terms of the unequal and uneven relationship between Africa and the world economy are constantly being (re)defined. What makes the “Africa” Bar in Paris *offshore*, yet deeply connected, is precisely the tension between the need to rely on local structures of power to do business on the African continent, and the strategy of evading local legal institutions. The “Africa” Bar in Paris is also a nexus where overlapping dynamics of globalization are at play and where the stakes of who benefits from these struggles are shaped as much by imperial legacies as proximity to new poles of economic and political power. Paris thereby emerges as a marketplace of “connected histories”: U.S.-led corporate legal globalization, colonial, and postcolonial relations. Yet, dramatic and ongoing changes on the continent itself, notably with the expansion of thriving local corporate bars in regional powerhouses like South Africa or Nigeria (see Klaaren 2015), along with the global competition between the United States, Europe and powerful new economic and political centers, foremost China, may be yet again re-shaping the relationship between Africa and the global economy. The expansion of a “Beijing consensus” freed from political conditionality, and outside the scope of U.S. imperial politics (see Halper 2010) and materialized with the massive Chinese investments into Africa through the “Belt and Road initiative” are indeed heralding the continent “as a place where international rivalries play out” (The Economist 2019). The challenge now, in the next step of this research agenda, would be precisely to zoom out into these global competition, and specifically the role played by China, as much as



to zoom in onto local legal markets across the African continent to trace their transformation over time in relation to national fields of state power, regional dynamics, and their connections with former *métropoles* and these new poles of global power.

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<sup>ii</sup> These developments are based in part on Dezalay 2018.

<sup>iii</sup> I have conducted about thirty interviews with lawyers from corporate law firms as well as other members of the Bar in Paris. Except for William Bourdon and Pascal Agboyibor, whose portraits are drawn below, and whose trajectories have been extensively documented in the media, I have used pseudonyms for all my other respondents. I built this fieldwork incrementally, based on my previous research (in the context of my PhD and postdoctoral work) on the transformation since the Cold war of militant fields of human rights; the institutionalization of international criminal law; as well as the social and professional structure of international dispute settlement mechanisms. Concerning the ‘corporate’ lawyers operating in Africa, from Paris, I used what could be described as a “swarming” technique: based on professional rankings of multinational corporate law firms, participant observation at professional conferences, and interviews so as to identify informants, and key players within this small market.

<sup>iv</sup> Author’s interview with *Martin* at Fair Links, Paris 2 July 2015.

<sup>v</sup> The term “Françafrique” refers to France’s relations with its former colonies in Africa. It was coined in a positive sense by Côte d’Ivoire independence President, Félix Houphouët-Boigny, to allude to the country’s economic growth and political stability under the umbrella of France. The term is now predominantly used to denounce the allegedly neo-colonial relationship France has with its former colonies in Africa.

<sup>vi</sup> Author’s interview with *Martin* at Fair Links, Paris 2 July 2015. Author’s translation from French.

<sup>vii</sup> The technical alternative to the military service.

<sup>viii</sup> Strengthening Assistance for Complex Contract Negotiations.

<sup>ix</sup> See Code of Conduct of the G7 CONNEX Initiative, [http://www.bmz.de/g7/includes/Downloadarchiv/150505\\_CONNEX\\_Code\\_of\\_Conduct\\_final.pdf](http://www.bmz.de/g7/includes/Downloadarchiv/150505_CONNEX_Code_of_Conduct_final.pdf) (5 March 2019).

<sup>x</sup> Author’s interview with Pascal Agboyibor, Paris, 22 May 2015, my translation from French. . Unless specified, subsequent quotes are derived from this interview.

<sup>xi</sup> Founded in 1937 by the French lawyer Raymond Viale.

<sup>xii</sup> Through a continuous re-invention of tradition, the family was recently reinstated as chief of canton by presidential decree under its ‘royal’ name, Tobgui Messan Agboyibo V, in May 2014.

<sup>xiii</sup> See *Jeune Afrique* 2014. In particular, Agboyibor is one of the counsels of Gécamines, one of the jewels of the mining industry of the DRC, which won in 2012 a long lasting legal battle against the U.S. investment management firm FG Hemisphere.

<sup>xiv</sup> Author’s interview with *Martin*, Fair Links, Paris 2 July 2015.

<sup>xv</sup> Author’s interview with *Julien*, McDermott, Will and Emery, Paris, 5 May 2015. Author’s translation from French.

## Structured abstract

### Purpose

This paper tackles the ongoing “new extraction” on the African continent. The failure of global policy efforts to foster the governance of mineral global value chains triggers an acute challenge for scholarship. It reflects knowledge gaps on the relationship between extractives, their role in contemporary global capitalism and the position of Africa in these developments.

### Approach

To overcome these policy hurdles and knowledge gaps, this article calls for a renewed research agenda, combining critical political economy, Global history and political sociology. It channels the attention towards the role played by law(yers) in these interconnections over time. It illustrates this approach with the case study of the “Africa” Bar in Paris which is a key site in which extractive deals between multinational corporations and African states in West Africa are negotiated

### Findings

A micro focus attentive to the characteristics of lawyers negotiating deals between multinationals and African states helps explain the dual position of the “Africa” Bar in Paris, as offshore yet connected as it is shaped by both imperial legacies and ongoing waves of globalization into the African continent.

### Originality

This research agenda, the first to combine these separate strands of knowledge, can play a powerful role to draw a more nuanced understanding of the unequal and uneven relationship between Africa and the world economy over time.

**Key words:** new extraction; Africa; Political sociology; global mineral value chains; lawyers

## Lawyers and the “new extraction” in Africa<sup>i</sup>

### Introduction. The “new extraction” in Africa: a challenge for policy and scholarship

Over the past fifteen years, the African continent has gained renewed prominence as a “mining frontier” (see Campbell 2009) in the wake of the context marked by the increased competition for critical raw materials and carbon energy and the ascent of China as an economic superpower, and acute global competition for critical raw materials and carbon energy. In 2013, fuel and mineral exports from Africa reached \$397 million, fifteen times more than development aid flows into the continent.<sup>ii</sup> These changes have raised hopes for the economic takeoff of the continent. A 2010 McKinsey report estimated the potential benefits of consumer-facing industries, resources, agriculture, and infrastructure together across the continent at \$2.6 trillion in revenue annually by 2020 (Roxburgh *et al.* 2010).

However, the expansion of the “extractive frontier” in African contexts has come along with increased inequalities, violent societal conflicts and environmental risks, increased by the volatility of mineral prices on global markets. The This renewed prominence of the African continent as a boon for extractive resources emerged in a context that contrasted eds markedly with the “new extraction” in across Latin American contexts a decade earlier (Deonandan and Dougherty 2016; Bebbington 2009). The The mining boom of the last two decades was most pronounced in Latin America, with a growth of the global share of Latin America in mining investment from 10 to 25% between 2003 and 2012 (Deonandan and

[Dougherty 2016](#)), while to a large extent the rush is yet to come in Africa where mineral reserves remain for the most part untapped ([Rosenblum 2016](#)). In Latin American contexts the new extraction has also been accompanied by political and social movements fostering - with varying degrees of success - a radical agenda of post-extractivism. ~~In particularly, this~~ ~~This~~ included the assertion of indigenous rights of local communities over extractive resources, notably through the increased exercise of the right to free, prior and informed consent institutionalized in various international legal instruments since the 1980s ([see Raftopoulos 2017; Szablowski, 2007](#)).

By contrast, the ~~rush for extractive minerals in African contexts, foremost in conflict-rife Democratic Republic of Congo over the 1990s and elsewhere on the continent, boom in extractive investments on the African continent in the first decade of the 2000s~~ came at the tail-end of structural adjustment programs, spearheaded by International Financial Institutions (IFIs). ~~These reforms, which~~ engineered the privatization of extractive economies to foster the regulatory strength of private actors and markets against political elites and weak governance. ~~These policies did little to curb the Far West like rush into Africa. Yet, i~~International campaigns spearheaded by international non-governmental organizations (INGOs) such as Global Witness at the end of the 1990s ~~have underscored the role played by minerals in violent conflict (on so-called “blood diamonds” underscored the Far-west like rush for extractive minerals in African contexts, foremost in the conflict-rife Democratic Republic of Congo). These advocacy~~Campaigns for contract and revenue transparency, environmental protection, and corruption investigations in the 2000s yielded some success in ~~mobilizations certainly played a critical role in~~ spurring a global regulatory tide over extractive resources markets, including ~~through~~ the growing reach of the 1977 US Foreign corrupt practices Act (FCPA), ~~domestic regulations in EU states, and EU regulations governing financial transactions (see Rich and Moberg 2015).~~ -

However, they could do little to curb the violence unleashed by this rush precisely because it unravelled in regions where global capitalism “finds minimally regulated zones in which to vest its operations” (Comaroff and Comaroff 2012: 13). ~~Indeed, these advocacy campaigns and policy initiatives happened “in a game of catch-up where the damage of the initial gaps have never fully been assessed” (Rosenblum 2016).~~ Ongoing battles on the detrimental societal and environmental effects of extractive deals between multinationals and resource-rich states ~~continuously underline~~continue to stress the acuteness of contests over the distribution of natural resources and benefits derived from them. They also pinpoint “loopholes” in the reach of global regulations (see Cutler and Dietz 2017) and the difficulty (if not total lack) of remedies available to disenfranchised communities at the national and international levels (see Muir Watt *et al.* 2019).

~~These struggles also underline that the question of who benefits from the “new extraction” on the African continent and how extractive deals sustain or counter injustice in the distribution of access to and/or benefits from natural resources is far from being resolved.~~

Part of ~~the~~is difficulty relates to the framing ~~itself~~of the regulatory response to the issue of the ~~distribution of natural resources~~governance of extractives on the African continent. The ~~predominant focus on the~~“resource curse” idea (see for an excellent critical overview, Murrey *forthcoming*) has gained traction in research and policy-making since the end of the 1980s as the dominant lens to understand the poor development performance of natural resource-rich African countries, due to wealth capture by corrupt political elites and conflict. ~~(Collier 2007) – seen to be affecting resource-rich African countries by impeding economic and societal development due to wealth capture by corrupt political elites – remains for the most part surprisingly ahistorical and state-centric. Indeed, the~~The “resource curse” explanation has exerted a strong policy pull from the 1990s. The overwhelming tendency of International Financial InstitutionsIFIs is to point to domestic political factors as the key



explanation for the disappointing returns of mining riches, i.e. corruption, lack of transparency and weak governance in African contexts (see [Campbell 2009](#)[Collier 2007](#)).

has been continuously contradicted by the thriving of private foreign investments in the very countries hailed as “failures,” like Angola or the Democratic Republic of Congo (Ferguson 2006).

Further, the regulatory tide remains fragmented and ill-suited to take in the intensely globalized and financialized nature of extractive resources global value chains. For example, the long-protracted project for an EU regulation ensuring that specific minerals entering the EU have been sourced responsibly, and without funding conflict and human rights abuses, in line with the OECD Due Diligence Guidance on Responsible Supply Chains, is yet to cover “downstream” importers of minerals.

These policy hurdles trigger acute challenges for scholarship. In the past couple of decades, the “resource curse” has generated intense debates, focused foremost on the methodology used to assert a causality between extractive governance and poor socio-economic performance (see the critique by Bebbington *et al.* 2018: 3-4). They are deeply tied to knowledge gaps on the relationship between extractives, their role in contemporary global capitalism and the position of Africa in these developments. Existing scholarship still widely overlooks the contribution of extractive resources to global capitalism (see Di Muzio and Ovadia 2016) as much as the dynamics of extractive industries themselves. Critical global political economy scholarship is starting to tackle the characteristics of mineral markets as “global value chains” and the impact of globalization and financialization on their structuration (see Cutler and Dietz 2017). However, most scholarship remains premised on the assumption that global value chains are the product of recent shifting economic conditions that mostly respond to the strategies and structure of multinationals themselves (with few exceptions: see Deonandan and Dougherty 2016). Debates on the resource curse have since evolved to focus on institutional quality as a primary determinant of diverging development outcomes. Scholarship in economics is increasingly underlining that rather than simply resources themselves, it is the institutions of extraction that play a crucial role in shaping the societal and environmental impacts of extractive commodities (Acemoglu and Robinson 2014). Thus, “‘getting the institutions right’ became the central objective in efforts at ‘escaping the resource curse’” (ibid: 3, quoting Humphreys *et al.* 2007).

Yet, building partly on the resource curse debate as well as on scholarship that preceded it, a growing body of work is emphasizing the need to understand the role of these institutional drivers in resource-dependent development not simply as top-down externally-driven variables to remedy the “resource curse”. Rather, it is their role in the *longue durée* that needs to be assessed: “one cannot build a framework to analyse the relationships between politics, extractive industry, and development and then introduce ‘institutions’ as an independent mediating variable. Such institutions are themselves a product of the same relationships that they mediate and have to be accounted for historically” (Bebbington *et al.* 2018: 6).

Looking at the *longue durée* of institutions of extraction recognizes that just like Latin America’s, much of Africa’s “economic and social history could be read as a long engagement with extraction” (Bebbington 2009: 14). The central role played by the African continent in the emergence and expansion of contemporary capitalism has long been established in a rich body of scholarship in political economy (drawing in particular on Rodney 1972) and anthropological and ethnographic work (see e.g., Ferguson 2006; Ellis 2012).

This article builds on and contributes to this body of work by channeling attention towards the role, in the *longue durée*, of law as an institution of extraction. The global regulatory tide has

~~On the other hand, global regulatory shifts have~~ spurred an increased demand for law, and with it for lawyers, to strengthen the governance of mineral ~~value chainsmarkets~~, be it ~~to foster in the form of “corporate social responsibility” or;~~ the stability of extractive contracts ~~or to ensure their positive impact on societal, environmental and development sustainability.~~ A great deal of the scholarship focused on international and domestic legal regimes governing extractives is concerned with the pluralism opened by the interplay between multiple, overlapping and often conflicting local, national, regional and international legal regimes (see Szablowski 2007) and the gaps for accountability fostered by the globalization and financialization of mineral value chains (Cutler and Dietz 2017). Certainly, the prominence taken by “corporate social responsibility” as a set of “soft” laws self-governing extractive industries has contributed to the growth of an interdisciplinary body of literature attuned to the power relations at play in the interactions between corporate activity and societies (Walker-Said and Kelly 2015).

~~However~~However, that law, in the form of multiple, overlapping and often conflicting local, national, regional and transnational legal regimes, as well as soft and hard law, plays a constitutive role in the ordering of mineral global value chains is yet to have gained enough traction in scholarship (see IGLP Law and Global Production Working Group, 2016). Policies still overwhelmingly tend to focus on law as a top-down and external variable, seeing in “clear rules” of governance a solution to the poor development returns of resource-rich African countries (e.g. Smith and Rosenblum 2011).

~~most of this scholarship is focused on the law as a top-down and external variable in these developments. That law, in the form of multiple, overlapping and often conflicting local, national, regional and transnational legal regimes, as well as soft and hard law, plays a constitutive role in the ordering of mineral global value chains is yet to have gained enough traction in legal scholarship (IGLP Law and Global Production Working Group, 2016).~~ When attention is channeled to the position of Africa in these developments, these knowledge gaps also reflect the protracted dependency lens under which the African continent continues to be viewed in existing scholarship. Just like Latin America, much of Africa’s “economic and social history could be read as a long engagement with extraction” (Bebbington 2009: 14). The central role played by the African continent in the emergence and expansion of contemporary capitalism has long been established. Yet, the position of Africa in globalization continues overwhelmingly to be construed as one defined by exclusion and marginalization. The imagery of the “new frontier” is therefore not just historically inaccurate. Narratives that continue to portray Africa as a foil for arguments about European capitalist history (see Cooper 2014) have important political effects, not least because they shape knowledge and scholarly hierarchies about legal, political, and social developments across the continent.

~~To overcome these policy hurdles and knowledge gaps,~~ This article therefore calls for a renewed research agenda amenable to trace the interaction between politics, economies and lawlaw and extraction -in the political economy of African states and in their relationship with global markets for extractives in the *longue durée*. The central claim of this research agenda is that uncovering the social, economic and political variables channeled through law and shaped by law -relationship between these variables over time provides a formidable entry point to trace the mechanisms by which role played by extractives in shaping the uneven and unequal connection between Africa and the world (see Cooper 2014) is being negotiated, justified and challenged over time. -

Section 2 describes ~~this research agenda~~the approach fostered here and the explanatory lens it is amenable to provide. It zooms in onto the specific role played by law(yers) in these developments. It suggests the relevance of a combining a political sociology of law and of lawyers through a micro focus, centered on the roles played

specifically by lawyers as builders of the state and intermediaries of globalization in Africa. ~~This~~ Such an approach underseores can help trace developments that remain otherwise invisible, notably the “interconnectedness” (Subrahmanyam 2004) between European colonialism on the continent, the emergence of global capitalism, and the consolidation of the contemporary international economic and legal political order since the colonial era. This micro focus, further, can help overcome the dis-connection between efforts to foster the redistribution of natural resources in resource-rich African states, and outcomes seen to continuously favor the prominent position of Northern multinationals and state elites in the African South.

The approach of globalization suggested here underlines dynamics of flows and counter-flows (see Ibhawoh 2013) that go beyond dichotomies between the “Global North” and the “Global South”, international law, and sovereignty. These dynamics indeed point to a more nuanced (though not less bleak) explanation of Africa’s unequal and uneven relationship with the global economy, as one shaped by the path of imperial legacies and successive interconnected waves of globalization across Africa. Section 3 illustrates this research agenda with an emblematic empirical case-study: that of the “Africa Bar” in Paris, ~~which has emerged~~ as a key site in which extractive deals between multinational corporations and African-Francophone states in West Africa are negotiated. It underlines the offshore yet connected structure of this small professional market, which, though tamed in recent years through regulatory pressures, still fosters inter-personal relations between French, white, corporate lawyers and African political elites. ~~in the negotiation of extractive deals.~~

### **A new research agenda to trace the Law(yers) in the uneven and unequal relationship between Africa and the world economy**

~~Debates on the role of extractive resources in development, and that of law in regulating extractives are driven by politics of knowledge and policy pulls that tend to foster knowledge gaps, specifically on the interactions between extractive industries, global markets and domestic political, social and economic developments on the African continent. These knowledge gaps are particularly problematic as they contribute to an apparently intractable conundrum. The resource curse rests on the premise of poor governance at the domestic level in resource rich economies. It therefore looks to external regulation through legal norms, and the market as a counter-weight. At the forefront of efforts to regulate distribution conflicts over extractives, the law specifically illustrates the challenges raised for policy and scholarship by these knowledge gaps. Not only do existing debates on the role of law tend to evade the responsibility of extractive industries themselves and that of the market, they are also premised on a reductive definition of globalization that ignores the inter-connectedness of the local, and the global, and the economics, social and political forces that have shaped the international economic and legal order over time.~~

~~What George Steinmetz has termed “imperial entanglements” (2013) has served to uncover how the history of the disciplines of anthropology and of sociology was deeply entrenched in the colonial enterprise. To date, studies of law and legal institutions in the African South have not undergone such an *aggiornamento*. Neither have economic studies. This is especially true for law and legal developments on the African continent. Debates on the role of law and legal institutions and the roles played by lawyers in the development of African states do not escape this a protracted dependency lens. The failure of the legal systems inherited from colonization (see World Bank 2003) has been coupled with the need to reform - if not reinvent - political, legal and economic institutions so as to check the tendency towards~~

personal, tyrannical and anti-entrepreneurial governance (Acemoglu and Robinson 2001). This is coupled, furthermore, with an exceptional knowledge gap on legal professions in Africa that contrasts with the abundant literature on the contributions of lawyers to political and economic change in the US, Europe, Latin America and more recently in Asia (with some exceptions, see Gobe 2013, Dezalay 2015). A number of studies focused on the governance of extractives across Africa have certainly underscored the positive effects of some legal reforms, especially international legal initiatives aimed at transforming the behavior of multinational extractive companies, such as section 1502 of the U.S. Dodd-Franck Act of 2010, which requires publicly traded companies to ensure that the raw materials they use to make their products are not tied to the conflict in the Democratic Republic of Congo, or soft law initiative led by the corporate sector itself to foster the social responsibility of its members, such as the International Council on Mining and Metals (see Berman *et al.* 2017; Rich and Moberg 2015). Yet, some of these same studies are also highlighting paradoxes. Berman *et al.*'s economic study (2017) unsurprisingly correlates the surge of societal conflict at the local level with the presence of foreign extractive companies on the African continent, which account for 60% of the sector. However, they also emphasize the sustainability of social ties: according to these authors, the presence of multinational corporate firms with a colonial past does not increase violence at the local level. This somewhat surprising conclusion lies in political embeddedness, that is the capacity of these corporations to benefit from the (military) protection of the host state.

Seemingly on a par with the ebb and flow of policy orientations and geostrategic interests over the continent, lawyers involved in the “new extraction” are overwhelmingly construed under two contrasting guises. They are either denounced as mercenaries at the service of new forms of colonial ‘looting’ (e.g. Burgis 2015) or idealized as a professional corps defending the rule of law (Halliday *et al.* 2012; Rostain and Regan 2014). These images of the law and lawyers are dis-connected from the *longue durée* of the transformation of the interaction between power and economics on the continent, and beyond, with the structure of capitalism.

The ongoing Global history turn in historical scholarship, particularly legal history (see Benton and Ford 2016), has opened Two recent developments in scholarship offer promising avenues to connect law to such political, economic and social variables, in the *longue durée*, politics and economics in the study of mineral value chains, and to position the African continent in these developments. The first is provided by a recent call for an inter-disciplinary dialogue between critical global political economy and legal scholarship. Looking in particular at the prominence played by private contracts—and with them, by private actors—in global governance, Cutler and Dietz (2017) frontally address the question of “who gets what,” that is who benefits or loses out of a global economy growingly structured around private contracts as an institution of transnational governance, in that it continuously redefines the frontiers between politics, economics and societies at the domestic and global level. Part of this research agenda speaks specifically to the question of extractives. Recent scholarship in economics, indeed, is increasingly underlining that rather than simply resources themselves, it is the institutions and infrastructures of extraction that play a crucial role in shaping the societal and environmental impacts in the *longue durée* of extractive commodities (Acemoglu and Robinson 2014). The microcosm of Bonny, in the Niger Delta in Nigeria, is one of many striking examples: it has switched over time from slave trade, to palm oil, to crude oil by building on similarly entangled shadow and official economic routes and social networks (see Ellis 2012). When the attention is channeled towards the globalization and financialization of mineral value chains, this opens the need to document relations of power along these chains, from the domestic level through to global markets (see Cutler 2017).



The ongoing “Global history” turn in historical scholarship, and particularly legal history (see Benton and Ford 2016), is providing ways to tackle this. Underseoring This body of scholarship underscores the connections between successive and competing imperial models, emphasizing how and how imperial legacies have been embedded in the modern “nation state” and the contemporary international legal and political order (see Burbank and Cooper 2010). Law was the cutting edge of colonialism (Chanock 1985), but colonialism was also ripe with conflicts over law’s remit. Thus, the imposition of a body of property law attuned to the economic interests of *métropoles* in their colonies was used to marshal the products of extraction - be it slaves, crops or minerals - to the metropolitan cores, and to ascertain a global political economy that would entrench colonies in the periphery. But the question of *who* benefited from property rights over land and extractive goods at the local level was the object of intense and continuous struggles - between European merchants, colonial administrators and local chiefs, among others (see Breckenridge 2011). In other words, law’s remit depended heavily on social and political variables at the local level.

The embeddedness of the contemporary international legal and economic order in colonialism has long been established (see Anghie 2005). Yet, Benton and Ford (2016) also trace how international law emerged out of a haphazard process over several centuries. Ultimately contributing to the growing reach of the metropolitan core and fostering the position of the British as world hegemon from the mid-19<sup>th</sup> century, this process was heavily influenced and mediated by middle-men and social hierarchies at the local level and by political conflicts that circulated and boomeranged back and forth between the *métropoles*, the colonies and among empires. International law in the form of an international legal order reflected therefore a series of bilateral treaties and other legal regimes that created a series of permissive spaces for imperial enforcement relying on British municipal law - specifically in relation to property rights - and producing patchy regulatory regimes.

This body of scholarship emphasizes the relevance of looking at social ties not only as a defining feature of colonial rule, but also as a *structural* component of law. They thereby open paths to trace the close association of law with the conversion of economic surpluses and power into enduring social relationships, in the *longue durée*. These insights on the diffusion of what was gradually institutionalized as international law – what Benton and Ford (2016) refer to as “vernacular constitutionalism” can also provide interesting paths, synchronically, to make sense of the re-structuration of markets for extractive commodities since the 1990s due to their increased globalization and financialization. The highly fragmented structure of the global market for minerals, which gives the upper hand to private corporations (mostly Northern) in the production, pricing, and investment decisions, while allowing for a multiplicity of intermediaries, from local chiefs through to red-neck extractive companies less vulnerable to reputational costs, plays into the relative breadth and scope of global regulatory frameworks, themselves shaped by intense economic and political struggles between the United States and emerging economic cores, foremost China. Again, law seems to be the cutting edge of these dynamics. Ongoing initiatives aimed at transforming the asymmetrical relationship between African states and private Northern multinational corporations stem from the need to stabilize foreign investments, away from the economic, political, and reputational costs of the renegotiation of extractive contracts, and their contests in arbitral and jurisdictional settings, including by “third parties” to extractive contracts like local communities. Again, also, distribution conflicts over extractives are played through law and are as much about law’s remit as they unfold across multiple scales (see Muir Watt *et al.* 2019).

A recent call for an inter-disciplinary dialogue between critical global political economy and legal scholarship to address the importance taken by multinationals in political and economic governance is offering some insights to address the challenges raised by this

fragmentation. Looking in particular at the prominence taken by private contracts – and with them, by private actors – in global governance, Cutler and Dietz (2017) frontally address the question of “who gets what,” that is who benefits or loses out of a global economy growingly structured around private contracts as an institution of transnational governance, in that it continuously redefines the frontiers between politics, economics and societies at the domestic and global level. Part of this research agenda speaks specifically to the question of extractives, by underscoring the need to document relations of power along mineral chains, from the domestic level through to global markets (see Cutler 2017).

– this new research (see Burbank and Cooper 2010) has opened paths to explore the instrumental role played by lawyers and legal institutions as vectors of domination and globalization – to connect the products of economic exploitation – be it slaves, crops or minerals – to global markets, but also in the transformation of power and social hierarchies in the colonial states as well as in core economic powers. This has given way to recent scholarship highlighting the contributions of lawyers as brokers connecting imperial legacies with contemporary transformations of the state (see Dezalay 2018\_).

Combining these two *foci* – power in the different nodes of mineral value chains, as well as the *longue durée* of the impact of imperial legacies in the present – can prove to be particularly relevant to trace the prominence of extractive resources in the trajectory of African states, as much as in the structure of global capitalism over time. The boon of extractive economies on the African continent – oil and mining industries, and now related infrastructure and land projects – have been a core driver of economic, political and legal developments in Africa from pre-colonial eras to the present (see Ellis 2012), making those a paradigmatic site to explore the history of the uneven and unequal connections between Africa and the world, as much as the history of global capitalism (Cooper 2014). This is the case not only because of the symbiotic relationship in the development of modern capitalist economies in the *métropoles* that built out of their imperial synergies (see Etemad 2005) and the colonial roots of the contemporary legal and economic international system, but also because of the way the impetus for extraction shaped the colonial and post-colonial field of state power in African settings. Tracing this colonial imprint is instrumental to map out the postcolonial trajectories of African states, economically, politically, and legally.

On the other hand, the structure of markets for extractives and these markets’ evolution from the pre- and colonial eras (from the slave trade onward) has continuously played into contests at the local, national, and international levels. These layered connections and contests have shaped the subsequent waves of restructuring of extractive economies nationally – from the post-independence waves of nationalization, to the “neo-liberal” privatizations of the 1980s through to the current reinstatement of the state as a development partner in “public-private partnerships.” They are also at the core of contests over the definition of “development,” as a responsibility of private extractive corporations, development institutions, and NGOs, or that of the state.

Further, the highly fragmented structure of the global market for minerals, which gives the upper hand to private corporations (mostly Northern) in the production, pricing, and investment decisions, while allowing for a multiplicity of intermediaries, from local chiefs through to red-neck extractive companies less vulnerable to reputational costs, plays into the relative breadth and scope of global regulatory frameworks, themselves shaped by intense economic and political struggles between the United States and Asia. The law is at the core of these developments. The “cutting edge” of colonialism (Chanock 1985: 4), the law played a core role in struggles over extractives and their dividends (see Breckenridge 2011). The law is again central to the “new extraction” in Africa. Ongoing initiatives aimed at transforming the asymmetrical relationship between African states and private Northern multinational corporations stem from the need to stabilize foreign investments, away from the economic,

political, and reputational costs of the renegotiation of extractive contracts, and their contests in arbitral and jurisdictional settings, including by “third parties” to extractive contracts like local communities. The law (and lawyers) are also instrumental in the negotiation of extractive deals between resource-rich African states and multinationals.

~~The Yet, such a~~ research agenda ~~is opened by these combined insights is~~ exceptionally challenging as it requires combining focal lengths, by zooming in onto specific contexts and by zooming out ~~on-on~~ global ~~evolutions-changes~~ (see Cooper 2014) so as to trace the interconnectedness between legal, political, economic and social variables, and local, national, regional and global scales. ~~It is also confronted to acute knowledge gaps, specifically on intermediaries, such as lawyers, involved in the negotiation of extractive deals. Seemingly on a par with the ebb and flow of policy orientations and geostrategic interests over the continent, lawyers involved in the “new extraction” are overwhelmingly construed under two opposed guises. They are either denounced as mercenaries at the service of new forms of colonial “looting” (e.g. Burgis 2015) or idealized as a professional corps defending the rule of law (see Halliday et al. 2012).~~

~~Focusing Yet, focusing~~ on lawyers - their trajectories, their characteristics and their professional strategies, can provide a formidable entry-point to trace these inter-connections.

~~This This political sociology of law and of lawyers entry-point~~ reflects ~~on the one hand~~ the research path opened by Ernst Kantorowicz (1989) and others in his wake, who have shown that lawyers are structurally positioned to play “double games” (Dezalay and Garth 2011). While at the service of power holders - and as such playing a central role of legitimization of state power - lawyers also need to distance themselves from politics, as a condition to protect the autonomy of the law, and with it their professional practices. ~~It Tracing these “double games” has opened rich avenues to trace and account for also takes in the specificity of the interstitial position of legal elites - African, European, and others - , across time and space, in the trajectory of the state and as intermediaries of the successive phases of globalization on the African continent. Thus, far from anecdotal evidence, details of lawyers’ trajectories in colonial and post-colonial contexts has helped to uncover continuous strategies of double games across law, politics, and economics, and between the local and the global (see Dezalay 2015; 2018).~~

Negotiating sovereignty as “shared out, layered [and] overlapping” (Burbank and Cooper 2010: 17) in imperial settings, lawyers could ~~thus be seen to~~ navigate between corporate and state power, the colony and the *métropoles* and inter-imperial confrontations. Imperial legal realms were ~~indeed~~ particularly favorable to the positions of lawyers as both collaborators and opponents (Oguamanam and Pue 2016): ~~thus, lawyers’ double games were embedded in, as much as they were shaping, battles over state power.-~~

~~This micro-focus on lawyers’ trajectories can also underscore~~ This approach is ~~instrumental to trace~~ how the legacy of the imperial realm is played out in the present, providing the path from which current developments emerge or diverge from (Dezalay and Garth 2010). ~~But it also emphasizes how, in the present, hegemonic battles continue to be played in conflicts through and around law. Indeed, these imperial legacies have also enabled the continuous circulation of lawyers, and their roles as go-betweens across sector, time, and scale in the postcolonial trajectories of the state: between politics, society and the market, local, national, and global fields (Dezalay 2018). This entry-point has indeed proven a formidable way to account for patterns of globalization in the contemporary era, in particular to trace US-led hegemonic exports of ideals and practices across Latin America and Asia (Dezalay and Garth 2002; 2010). De sa e Silva and Trubek (2018) underscore the interdependence, if not symbiosis, between the professional power of corporate lawyers and economic development strategies in the past thirty years in Brazil, and the importance of alignment with and resources drawn from international links, specifically with the corporate~~

legal sector in the US. In a current context of acute global competition over critical minerals and carbon energy, and growing contests for hegemony by new economic superpowers like China, tracing the profiles, resources and strategies of lawyers involved in the negotiation of extractive contracts between multinationals and resource-rich African states can thus offer a way not only to see how imperial pasts are woven into the present, but also how new forms of imperialism may be emerging.

This is rendered especially visible, as in the case study that follows when the focus turns to the question of extractives and who benefits from them.

### A case-study of the “Africa Bar” in Paris: *offshore*, yet connected<sup>iii</sup>

The case study ~~used~~ presented here to provide an empirical example is an apparently *counter-intuitive* illustration: the “Africa” Bar in *Paris*, ~~which has emerged as a key site in which extractive deals between multinational corporations and African states are negotiated~~. Yet, tracing the individual trajectories and professional strategies of the lawyers operating within this social microcosm underscores how this site emerged as key marketplace in which extractive deals, along with other emerging economic sectors such as infrastructures and telecommunications, are negotiated between multinational corporations and African states. This entry-point also helps explain the offshore geographical position of this site due to the ~~an~~ enduring double position of Paris: as a former colonial *métropole*, and also as a beach-head in the expansion of U.S. ~~and U.K.~~ led globalization of corporate law toward Europe from the 1980s, and more recently into Africa. The analysis of the social relations at play in this microcosm thus provides an emblematic entry-point to trace how the relationship between extractive economies, state transformations, and the position of Africa in globalization are negotiated in the *longue durée*. It is also a crucial site to map out law’s entanglement with social networks, politics, and economics, across time and space.

Focusing on lawyers operating within this “Africa” Bar in Paris, I have relied on a qualitative methodology that can be described as relational biography.<sup>iv</sup> Asking respondents *who* they are, that is exploring not only their professional and educational background but also their social characteristics, is a way to trace how successful their strategies could be in entering and positioning themselves within this small professional market. Beyond, it is a way to map out the configuration of this space across time and space.

~~This empirical focus helps explain the apparently paradoxical position of this Bar, located in Paris, and therefore offshore even though it focuses on extractive deals involving African states~~. Channelling attention towards the agents invested in this Bar and their characteristics is also the only way to depart from apparently irreconcilable oppositions - between the national, and the international, and foremost the ideological trope under which ~~these extractive~~ deals are commonly construed. “It’s a White’s business!”<sup>v</sup> interjected a senior economic consultant asked about dealings between resource-rich African states and multinationals from the North. The spectre of neo-colonialism in the on-going rush for natural resources in Africa is intensified by the economy of appearances which shrouds the industry. Talks of mining “booms” or of the “perfect storm” are mired with rumours. Not only are extractive contracts between resource-rich states and multinationals for the most part sealed under a lid of secrecy. But accurate data on actual extractive potentials, projects and economic returns are hard, if not impossible, to come by. Particularly in France, due to the sulphurous legacy of the “Françafrique”,<sup>vi</sup> the reputation of lawyers involved in dealings in the African continent has been tainted with phantasms and denunciations. The “Club of Africans,” hailed as the “white marabouts of the *Françafrique*” (Hugeux 2007), was described somewhat scathingly by a respondent as comprising the “incompetent,” the “suitcase carriers,” the “skilled-ones who know how to carry suitcases” and the “skilled ones



who carry portfolios.”<sup>vii</sup>

Yet, the originally extremely select “Africa club” of Paris has recently grown into an enlarged though still restricted market of about twenty lawyers, controlled by a dozen Paris offices of U.S. and U.K. multinational corporate law firms. ~~But Yet,~~ this small market remains dominated predominantly by *French* male lawyers operating within these firms. The trajectory of a prominent member of this Bar can help explain what can thus be described as a symbolic revamping of legal deals between multinational corporations and resource-rich states on the African continent - but only, though, through a slight displacement in the structure of positions within this small professional market. After studying law in France, ~~‘Antoine’ Antoine~~ left for Vanuatu, as a “conscientious objector,”<sup>viii</sup> where he was appointed as public prosecutor at the country’s independence in 1980. Antoine then studied international law in Australia, which he described as “a rare vocation” at the time. After working at the Crédit du Nord for two years in financing, he moved to Gabon, as an associate at Fidafrica, the legal branch of PricewaterCoopers (PwC), until 1998. In this capacity, he became the counsel of Samuel Dossou Aworet - Gabon’s “Mr Oil.”

The recent conversion of this “White African” as a vocal proponent of the “social responsibility of corporations,” notably as a member of the Corporate Social Responsibility Committee of the American Bar Association, can be explained by external shocks - politically and economically driven - that have contributed to restructuring the social structure of this small niche of counsels for corporations and African heads of state. The growth of this legal market can be attributed in part to the increased financialization of commodities markets in the past fifteen years, and with it to the growing technicality of dealings on the continent (see UNCTAD 2012). ~~In these dynamics, m~~Multinational corporate law firms ~~were better positioned to benefit from these changes due to , with~~ their collective *know how*, from the negotiation of contracts, to arbitration—~~could be better positioned~~. The 2008 financial crisis and, before that, the Enron scandal in 2002 which precipitated the demise of Andersen and shed light on the conflicts of interest of consulting firms, like PwC, ~~until then the most thoroughly and widely pre-positioned in the African continent~~, also opened new opportunities for multinational corporate law firms towards these new emerging economic markets (see The Economist 2015).

Other global drivers help explain the dynamics of this enlargement. On the one hand, incentives for the global regulation of dealings between foreign corporations and resource-rich states in Africa increasingly impact on the operations of multinational corporations on the continent. For the most part a set of soft law - known as “corporate social responsibility,” non-binding on corporations - these regulations carry heavy reputational costs. The growing reach of the 1977 US FCPA against corruption, and the Extractive Industries Transparency Initiative (Rich and Moberg 2015) also played an instrumental role. ~~But e~~Extractive deals in the African continent are foremost also heavily impacted by development policies and the role of invisible actors sitting at the negotiation table between multinationals and resource-rich African states: —the World Bank, and bilateral development agencies —: ~~a trilateral relation between development donors, corporations and states that is specific to African continent~~. Most lawyers in the “Africa club” thus got their introduction to the developing continent by working on sovereign debt restructuring in the 1980s. The waves of privatization of extractive industries - spearheaded by the World Bank through the 1980s - opened up opportunities for corporate lawyers, and so did the promotion of “public-private partnerships” from the early 1990s, as they position the contract and the lawyer at the heart of the relation between the public sector and the private sector (see Vauchez 2012: 79).

Driven foremost by the need to stabilize foreign investments - against challenges to extractive contracts, like national fiscal policies of “upwards adjustments” (so-called “resource nationalism”), and jurisdictional contests - a number of North-driven policy



endeavours have aimed at “levelling the playing field” between foreign corporations and African states since the 2010s. For example, the “Connex Initiative”<sup>ix</sup> spearheaded by the German government during its presidency of the G7 in 2014 aimed at drafting a “code of conduct” to “strengthen advisory support to low-income country governments in their negotiation of complex commercial contracts - to make the support that is available more comprehensive and more responsive to governments’ needs and to contribute to fairer, more sustainable investment deals.”<sup>x</sup> The African Legal Support Facility set up in 2010 in Abidjan under the umbrella of the African Development Bank - and the sponsorship of the NGO Transparency International - similarly endeavours to provide assistance to African countries to strengthen their legal expertise and negotiating capacity in debt management and litigation, natural resources and extractive industries management and contracting, investment agreements, and related commercial and business transactions. For both initiatives, a core aim is therefore to restructure legal services to African states away from a charismatic market of shadow advisors, towards an enlarged and more transparent market of legal services to states.

Yet, to understand the ambiguous impact of these changes on the “Africa club” in Paris it is necessary to relate them to two other connected dynamics: the structuration of the corporate Bar in Paris over time; and the threads of relations between France and its former colonies. Both define barriers of entry and the distribution of positions in a space whose structure has been transformed under the impetus of the “Wall street” law firm model since the 1990s (see Dezalay 1992), but whose boundaries remain defined by the capacities to access and juggle with-across poles of power (economics, politics, social) shaped by the relations between Paris and its former colonies.

This is particularly visible in the trajectory of one of the few Africans within this select market, Pascal Agboyibor. In his late forties, this Togolese lawyer is one of the very few —there are but a dozen— Africans working at multinational corporate law firms, what more, as a sitting member of the administrative council of the U.S. firm Orrick Herrington & Sutcliffe LLP and the head of its Africa department in Paris. Agboyibor is hailed as a “shadow power broker” (Ngisi 2015) of transactions between states and foreign corporations in the African continent. With a 60 people strong department, Orrick, he claims, invests a huge proportion of its activities - 20% - in Africa.

“I was taught very early on that I would become a lawyer.”<sup>xi</sup> The law, for Agboyibor is an acute political and family matter. His father, Yawovi Agboyibo, a former president of the Lomé Bar, political opponent and Prime minister in the transition between the Gnassingbé regimes (in 2006-2007) played a prominent role in the transition of Togo to multi-partyism in 1991. Yawovi Agboyibo had also turned to corporate law in the early 1970s by integrating the very first law firm of the country,<sup>xii</sup> after studying law in France. During an era when the newly independent state of Togo was massively recruiting into the administration, this choice appeared like an anomaly. Yet, investing in corporate law had insured the conversion of the resources of this royal family, evinced from local power since the 1930s<sup>xiii</sup> by the French colonial administration, towards the political and economic networks tying the country to its former *métropole*.

One generation later, this proximity contributed to propel Pascal Agboyibor into the close-knit corporate Bar in Paris, first in 1993 at Jeantet et Associés, one of the French pioneers of corporate law, before joining the Paris branch of the U.K. firm Watson, Farley and Williams in 2000, whose teams integrated with Orrick, Herrington & Sutcliffe LLP in 2002. Agboyibor became a partner at Orrick in 2003. After studying law in Lille, Agboyibor built up his portfolio of African relations during a secondment at the African Development Bank in Abidjan in 1996 and on introductions from his father - notably to take on the latter’s arbitration disputes between the Democratic Republic of Congo and “vulture funds.”<sup>xiv</sup>

Agboyibor’s trajectory thus unveils a “layered” habitus pointing to the multiple

historical strata of legal globalization on the African continent as much as their connexions with local struggles and political hierarchies. But it also points to the wider transformation of corporate legal markets since the 1990s and the prominent yet ambiguous position of Paris in these developments. When he started his career, Agboyibor strategically invested in securitization, positioning himself in the financialisation of commodities markets. He reinvested fully his African portfolio in the wake of the 2008 financial crisis, which prompted the search of multinational corporate law firms for new markets in emerging economies, ~~foremost including~~ Africa.

While only 10% of Agboyibor's practice involved business transactions on the African continent in 2008, it now accounts for 99% of his time. Though, when he entered Jeantet in the early 1990s, there were but a handful of Africans in corporate law firms in Paris - and elsewhere. His first "African" case involved the Chad-Cameroun pipeline. "It was the old argument at the time. They needed an African to sit at the table. There is a deep symbolic violence behind this. This is probably what made me leave Jeantet. There is a huge difference between French and Anglo-Saxon firms on this." ~~The stormy creation of a branch of Orrick, orchestrated by Agboyibor, in Abidjan in 2014—it triggered an outcry from the Bar in Abidjan (see Pierrepont 2014)—also emphasizes the difficult, thorny dynamic of this new wave of legal globalization into Africa.~~

Part of the success of U.S. and U.K. corporate law firms in dominating the ~~corporate commodities~~ legal market ~~for extractives~~ in Paris also stems out of the huge capacity of multinational law firms - as opposed to solo legal practice - in dodging the volatility of markets for commodities (and with them, ~~that of~~ legal markets), including by waging multi-front legal strategies: from the negotiation of contracts to arbitration or litigation. As underscored by a respondent: "the difference between Agboyibor and others is the structure of the firm: it is better than having lone lawyers doing all the work."<sup>xv</sup> Yet, it is also no accident that predominantly French lawyers operate within this market. It enables these firms to build on a symbolic displacement, away from the stigmata of the "Françafrique", while still also benefiting from the *know who* of these lawyers.

It is perhaps on the side of services to states that the transformation of the "Africa" Bar in Paris is the deepest – though the shift remains symbolic. As explained by a respondent, in the past "there was not much regulation. We still work a lot for states, but it is mostly private practice. The practice of counselling for states has evolved. It is more transparent, more open. Now it works a lot on the basis of tenders. Before, it was through inter-personal relations; presidents and political advisors would meet their counsels by chance encounters, in restaurants. Now except for counsels to presidents, where it is different, it is all on the basis of tenders."<sup>xvi</sup> Initiatives such as "Connex" or the African Legal Facility mentioned above aim precisely at opening up this still extremely close-knit market defined by charismatic characteristics and inter-personal ties.

The stake of these transformations is indeed access to Africa as a new market for corporations and law multinationals from the U.S. and the U.K.: as stated by a professional publication, "an Africa office is no magic door to deals" (Taylor 2016) especially if newcomers are not corporations with an imperial past (The Economist 2016). The offshore – yet connected – structure of the Africa Bar in Paris could thus be long term - depending on the pace of development and varied structure of national legal fields on the African continent.

## Conclusion

In media and specialist accounts, talks of the end of the commodities' "super cycle" - and with it, the fear of African states plunging into the debt crisis of the 1980s— have reignited the "resource curse" debate ~~and the desirability of governing trade and financial flows~~

globally (see Rich and Moberg 2015). Policies continue to correlate the poor development performance of resource-rich African states to their poor governance and the weakness of their institutions. In mainstream scripts about legal globalization in Africa, this weakness of African national economies has been linked to the failure of the legal systems inherited from colonization. The need to reform – if not reinvent – political, legal, and economic institutions continues to be heralded as a way to check the tendency toward personal, tyrannical, and anti-entrepreneurial governance.

Yet, channeling attention towards law not as an external variable to curb the “resource curse”, but rather itself an institution of extraction in the *longue durée* can provide for a more nuanced picture of the role played by law, over time, to negotiate, justify and challenge the uneven and unequal relationship between Africa and the world economy over time. the thriving of private foreign investments in the very countries hailed as “failures,” like Angola or the Democratic Republic of Congo opens a much more complex image than the mere economic dependency of the continent – notably with the expansion of a “Beijing consensus” freed from political conditionality, and outside the scope of U.S. imperial politics (see Halper 2010).

As this article has endeavored to highlight, the renewed – propounded or contested – prominence of the African continent in the global competition for extractive resources opens an opportunity, and needed inquiry, to assess the relationship between capital investment, politics, and law in these transformations.

The position of the “Africa” Bar in Paris underscored the relevance of looking at the past to understand these changes the transformation of this relationship over time, and how “Africa” is being built into a new market for extractive resources. To account for these changes, however, it is necessary to go beyond an understanding of globalization as a flow driven by the North into the African South. Rather, channeling the attention towards the characteristics of the agents invested in the “Africa” Bar, their biographies and their professional strategies, underscored the specificities of this professional market as a “cross-roads” space. Structured around combinations of resources - economic, social, political, and legal -, this space is by definition trans-national, shaped by imperial legacies and the 1980s’ wave of corporate legal globalization into continental Europe.

It is also a symbolic space where the terms of the unequal and uneven relationship between Africa and the world economy are constantly being (re)defined. What makes the “Africa” Bar in Paris offshore, yet deeply connected, is precisely the tension between the need to rely on local structures of power to do business on the African continent, and the strategy of evading local legal institutions.

The “Africa” Bar in Paris emerges indeed is also as a nexus where overlapping and at times contradictory dynamics of globalization are at play, and where the stakes of who benefits from these struggles are shaped as much by imperial legacies as proximity to new poles of economic and political power. Paris thereby emerges as a marketplace of, indeed, is a nexus of “connected histories”: U.S.-led corporate legal globalization, colonial, and postcolonial relations, and currently yet, dramatic and ongoing changes on the continent itself, notably with the expansion of thriving local corporate bars in regional powerhouses like South Africa or Nigeria (see Klaaren 2015), along with the global competition between the United States, Europe and powerful new economic and political centers, like foremost China, may be yet again re-shaping the relationship between Africa and the global economy. The expansion of a “Beijing consensus” freed from political conditionality, and outside the scope of U.S. imperial politics (see Halper 2010) and materialized with the massive Chinese investments into Africa through the “Belt and Road initiative” are indeed heralding the continent “as a place where international rivalries play out” (The Economist 2019). a, over raw commodities.

What makes the “Africa” Bar in Paris offshore, yet deeply connected, is precisely the tension between the need to rely on local structures of power to do business on the African continent, and the strategy of evading local institutions of power deemed inefficient and corrupted. But at stake is also the intense competition in the ongoing wave of globalization into the continent, with international corporate law firms vying to secure their turf in a volatile and fragile global context. The challenge now, in the next step of this research agenda, would be precisely to zoom ~~in onto~~ out into these global competition, and specifically the role played by China, as much as to zoom in onto local legal markets across the African continent to trace their transformation over time in relation to national fields of state power, regional dynamics, and their connections with former *métropoles* and these new poles of global power.

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<sup>ii</sup> See Burgis 2015 and the Organisation for economic cooperation and development (OECD) statistical database at <<http://stats.oecd.org/Index.aspx?DataSetCode=DACGEO>> (4 March 2019).

<sup>iii</sup> These developments are based in part on Dezalay 2018.

<sup>iv</sup> I have conducted about thirty interviews with lawyers from corporate law firms as well as other members of the Bar in Paris. Except for William Bourdon and Pascal Agboyibor, whose portraits are drawn below, and whose trajectories have been extensively documented in the media, I have used pseudonyms for all my other respondents. I built this fieldwork incrementally, based on my previous research (in the context of my PhD and postdoctoral work) on the transformation since the Cold war of militant fields of human rights; the institutionalization of international criminal law; as well as the social and professional structure of international dispute settlement mechanisms. Concerning the ‘corporate’ lawyers operating in Africa, from Paris, I used what could be described as a “swarming” technique: based on professional rankings of multinational corporate law firms, participant observation at professional conferences, and interviews so as to identify informants, and key players within this small market.

<sup>v</sup> Author’s interview with ‘Martin’<sup>2</sup> at Fair Links, Paris 2 July 2015.

<sup>vi</sup> The term “Françafrique” refers to France’s relations with its former colonies in Africa. It was coined in a positive sense by Côte d’Ivoire independence President, Félix Houphouët-Boigny, to allude to the country’s economic growth and political stability under the umbrella of France. The term is now predominantly used to denounce the allegedly neo-colonial relationship France has with its former colonies in Africa.

<sup>vii</sup> Author’s interview with ‘Martin’<sup>2</sup> at Fair Links, Paris 2 July 2015. Author’s translation from French.

<sup>viii</sup> The technical alternative to the military service.

<sup>ix</sup> Strengthening Assistance for Complex Contract Negotiations.

<sup>x</sup> See Code of Conduct of the G7 CONNEX Initiative, [http://www.bmz.de/g7/includes/Downloadarchiv/150505\\_CONNEX\\_Code\\_of\\_Conduct\\_final.pdf](http://www.bmz.de/g7/includes/Downloadarchiv/150505_CONNEX_Code_of_Conduct_final.pdf) (5 March 2019).

<sup>xi</sup> Author’s interview with Pascal Agboyibor, Paris, 22 May 2015, my translation from French. Unless specified, subsequent quotes are derived from this interview.

<sup>xii</sup> Founded in 1937 by the French lawyer Raymond Viale.

<sup>xiii</sup> Through a continuous re-invention of tradition, the family was recently reinstated as chief of canton by presidential decree under its ‘royal’ name, Tobgui Messan Agboyibo V, in May 2014.

<sup>xiv</sup> See *Jeune Afrique* 2014. In particular, Agboyibor is one of the counsels of Gécamines, one of the jewels of the mining industry of the DRC, which won in 2012 a long lasting legal battle against the U.S. investment management firm FG Hemisphere.

<sup>xv</sup> Author’s interview with ‘Martin’<sup>2</sup> Fair Links, Paris 2 July 2015.

<sup>xvi</sup> Author’s interview with ‘Julien’<sup>2</sup> McDermott, Will and Emery, Paris, 5 May 2015. Author’s translation from French.